

1 Small Business Finance Agency

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3 Adopted Rules Relating to Amendment of the General Provisions

4 Section of Existing Rules of the Agency and the Making of

5 Business Loans

6

7 Rules as Adopted

8 4 MCAR S 14.001 Scope. These rules are made pursuant to Minn.

9 Stat. S 362.53, subd. 4 (1980) to implement and make specific

10 the provisions of the Act and relate to the providing of

11 Pollution Control Loans and Business Loans.

12 4 MCAR S 14.005 Misrepresentation by applicant. The agency may

13 forthwith reject any application, whether or not previously

14 approved, may revoke any preliminary or final resolution prior

15 to sale of the bonds approved thereby or may refuse to close any

16 loan in the event that any information provided to the agency by

17 the owner contains a material misrepresentation or omission.

18 Each applicant shall have an affirmative duty and obligation to

19 update and correct all information provided to the agency.

20 4 MCAR S 14.006 Severability. If any provision of these rules

21 or the application thereof to any business or person or

22 circumstance is held to be invalid, such invalidity shall not

1 affect any other provision or application of any other part of
2 this rule or any other rule which can be given effect without
3 the invalid provision or application, and to this end the
4 provisions of this rule and the various applications thereof are
5 declared to be severable.

6 Chapter Three: Business Loans (4 MCAR SS 14.020-14.029)

7 4 MCAR S 14.020 Overview of procedure for approval of business
8 loans.

9 A. Submission of application. To be eligible for a business
10 loan, an owner shall make an application for a business loan
11 pursuant to 4 MCAR S 14.021 of this rule on approved application
12 forms of the agency.

13 B. Approval of application by executive director. The
14 executive director shall process the application in accordance
15 with the procedures and limitations set out in 4 MCAR S 14.021.
16 The criteria the executive director shall use in approving an
17 application for processing are set out in 4 MCAR S 14.021.

18 C. Acceptance for processing. Upon the determination by the
19 executive director that the business loan requested meets the
20 eligibility requirements of 4 MCAR S 14.021, the agency shall
21 determine pursuant to 4 MCAR S 14.023 if the agency intends to
22 fund the requested business loan subject to final authorization
23 by the agency.

24 D. Final authorization of business loan. Upon the
25 determination by the agency that the loan requested pursuant to
26 an application which has been accepted for processing can and
27 should be funded, the agency shall adopt a resolution approving
28 such loan, which resolution shall include a provision that the
29 obligation of the agency to make the loan is contingent on the
30 ability of the agency to sell its bonds on terms which the
31 agency, in its sole discretion, deems acceptable. In addition,
32 any such resolution may contain such other provisions and
33 conditions as the agency, in its sole discretion, deems
34 advisable.

35 4 MCAR S 14.021 Application procedures.

1 A. The owner shall submit to the agency copies of the
2 completed application upon the forms provided by the agency.

3 B. Application shall be deemed to have been made upon
4 receipt by the agency of a completed application with all
5 required documentation and exhibits, together with the required
6 fee specified in the application forms. In the event that an
7 incomplete application is received, the executive director shall
8 notify the applicant specifying the deficiencies. The applicant
9 shall have 60 days from the date of the executive director's
10 notification to complete such application. If the application
11 is not completed within 60 days, the application shall be deemed
12 to be rejected and the applicant must reapply to be further
13 considered. In the event the executive director is able to
14 determine from the information submitted on an incomplete
15 application that the applicant is not an owner or the proceeds
16 of the requested business loan are intended to finance
17 expenditures not permitted under the Act, the executive director
18 shall so notify the applicant.

19 C. Upon receiving a completed application, the executive
20 director shall review the application and shall make a
21 determination as to whether the applicant is an owner as defined
22 in the Act or the proceeds of the requested business loan are
23 intended to finance expenditures permitted under the Act.

24 D. Costs eligible for funding are the capital expenditures
25 set forth in the Act, including the following:

- 26 1. Land and/or building acquisition costs,
- 27 2. Site preparation,
- 28 3. Construction costs,
- 29 4. Engineering costs,
- 30 5. Equipment and/or machinery,
- 31 6. Bond issuance costs,
- 32 7. Underwriting or placement fees,
- 33 8. Initial trustee's fee,
- 34 9. Initial fee of guarantor or insuror, if applicable,
- 35 10. Small Business Administration processing and
36 administration fee, if applicable,

- 1 11. Minnesota Small Business Finance Agency fee,
- 2 12. Certain contingency costs,
- 3 13. Interest costs during construction, and
- 4 14. Legal fees, including those of agency's bond counsel.

5 The agency shall determine that an expenditure is not
6 eligible for funding if in the opinion of the agency financing
7 of such expenditure may adversely affect the exemption of the
8 interest on the agency's evidences of indebtedness from federal
9 income taxes.

10 E. After approving or disapproving an application, the
11 executive director shall notify the applicant of the
12 determination and the treatment of the application as follows:

13 1. If the executive director determines that the
14 applicant is an owner as defined in the Act and that the costs
15 specified in the application are eligible for funding, the
16 application shall then be deemed accepted for processing and
17 treated in accordance with the agency review provisions
18 established in 4 MCAR S 14.023.

19 2. If the executive director determines that the
20 applicant is not an owner as defined in the Act, the application
21 shall be rejected and not further considered.

22 3. If the executive director determines that any of the
23 costs described in the application are not eligible for funding,
24 the executive director shall note the deficiencies in the
25 application and shall so notify the owner. The owner shall have
26 30 days from the date of the executive director's notification
27 to amend the application. In the event the application is
28 amended in a timely fashion to include only eligible costs, it
29 shall be treated in accordance with the agency review provisions
30 established in 4 MCAR S 14.021 F. If the application is not
31 properly amended within 30 days, the application shall be deemed
32 rejected and not further considered.

33 F. In the event that an application is rejected for
34 processing pursuant to 4 MCAR S 14.021 E.2. or 3., the applicant
35 may, within 30 days after date of the notification by the
36 executive director, request the executive director to submit the

1 determination to the agency for review at the next regularly
2 scheduled meeting of the agency for which the agenda has not
3 been established. If the agency approves the application, the
4 application shall be treated in accordance with 4 MCAR S 14.023.

5 4 MCAR S 14.022 Application content. ~~Applications shall be on~~
6 ~~forms of the agency and shall include such information as the~~
7 ~~agency reasonably deems necessary~~ The executive director shall
8 prepare uniform loan application forms for use by the public
9 setting forth the information necessary for the determination of
10 eligibility for a business loan pursuant to the Act and these
11 rules.

12 4 MCAR S 14.023 Evaluation procedure. Applications approved for
13 processing by the executive director shall be presented to the
14 agency for approval or disapproval. If the agency disapproves
15 the application, the executive director shall so notify the
16 applicant. If the agency approves the business loan for funding
17 it shall forthwith pass a preliminary resolution giving
18 preliminary approval to the project to be financed from the loan
19 proceeds and stating the name of the owner, a brief description
20 of the project, and the amount of the loan. Such a resolution
21 shall not obligate the agency to issue bonds or to fund any
22 loan, but shall only constitute an expression of current
23 intention of the agency to issue such bonds or to fund such a
24 loan. The preliminary resolution may contain a time limit with
25 respect to the issuance of the bonds, may be revoked or amended
26 by the agency at any time prior to the final resolution of the
27 agency without liability to the agency and may impose any
28 conditions or requirements which the agency deems desirable.
29 The executive director shall forthwith notify the applicant of
30 the agency's approval and furnish the applicant a copy of the
31 preliminary resolution.

32 The agency shall review and consider approval of an
33 application for a business loan, on the basis of effectuating
34 the purposes of the Act, including determinations regarding the
35 following:

- 1 A. That the applicant is an owner as defined in the Act,
- 2 B. That the small business reasonably can be expected to
- 3 maintain a sound financial condition and to retire the principal
- 4 and pay the interest on the loan made or guaranteed in
- 5 accordance with the terms of the loan agreement,
- 6 C. That the project is economically feasible with a
- 7 reasonable expectation that the life of its economic feasibility
- 8 will exceed the maturity of the loan,
- 9 D. That the project will create or maintain a sufficient
- 10 number and type of jobs to justify agency participation in its
- 11 financing,
- 12 E. That the project feasibility is sufficient to allow the
- 13 agency to sell the bonds required for its financing,
- 14 F. That the project and its development is economically
- 15 advantageous to the state, that the provision to meet increased
- 16 demand upon public facilities as a result of the project is
- 17 reasonably assured, and that energy sources to support the
- 18 successful operation of the project are adequate,
- 19 G. That if the project shall have the effect of a transfer
- 20 of employment from one area of this state to another the agency
- 21 determines that the project is economically advantageous to the
- 22 state or that the project is necessary to the continued
- 23 operation of the business enterprise within the state,
- 24 H. That ~~other criteria have been met which the agency has~~
- 25 ~~determined~~ project will effectuate ~~assist~~ in fulfilling the
- 26 ~~purposes of the Act.~~

27 4 MCAR SS 14.024-14.029 [Reserved for future use.]